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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. CURTIS LEE BEASLEY, Defendant and Appellant.	C081525 (Super. Ct. No. 15F03732)

As part of a plea agreement, defendant Curtis Lee Beasley pleaded no contest to driving under the influence of alcohol and admitted an allegation that he personally inflicted great bodily injury as to that count. He now contends he received ineffective assistance of counsel and entered an involuntary plea because trial counsel did not tell him that his admission of the personal infliction of great bodily injury allegation rendered the offense a strike. We affirm the judgment.

FACTS AND PROCEEDINGS

A felony complaint charged defendant with driving under the influence of alcohol (DUI), and in so doing failing to stop and thereby proximately causing bodily injury to Colleen Catabran (count 1; Veh. Code, § 23153, subd. (a)); driving with a blood-alcohol

content over 0.08 percent, failing to stop, and proximately causing bodily injury to Catabran (count 2; Veh. Code, § 23153, subd. (b)); failing to render assistance after an accident (count 3; Veh. Code, § 20001, subd. (a)); and driving with a suspended or revoked license, a misdemeanor (count 4; Veh. Code, § 14601.2, subd. (a)). As to counts 1 through 3, the complaint alleged that defendant personally inflicted great bodily injury (GBI) upon Catabran within the meaning of Penal Code section 12022.7, subdivision (a) (unless otherwise set forth, statutory references that follow are to the Penal Code), rendering the offenses serious and violent felonies within the meaning of sections 1192.7, subdivision (c)(8) and 667.5, subdivision (c)(8). As to counts 1 and 2, the complaint also alleged that defendant had previously been convicted of violating Vehicle Code section 23152, subdivision (b) in 2010 and 2012.

Defendant entered into a conditional plea agreement. In return for pleading no contest to counts 2 and 3, admitting the GBI allegation as to count 2, and admitting the two prior convictions, he was promised the dismissal of all remaining counts and allegations and a state prison term of five years eight months (the low term of two years on count 2, three years for the GBI enhancement, and eight months (one-third the midterm) on count 3). Defendant also admitted to a violation of probation in return for receiving no additional time; the trial court deferred further issues related to the probation violation to the date of sentencing.

The parties stipulated to the following factual basis for the plea: "[O]n or about [May 21, 2015,] about 5:25 p.m., the defendant went through a stop sign without stopping at the intersection of Edison and Howe. Ms. Catabran stopped at the stop sign and proceeded into the intersection when the defendant ran into her, causing a collision. [¶] An eyewitness estimated that the defendant was going above the speed limit, possibly in the area of 70 miles an hour. The witness and Ms. Catabran saw the defendant get out of his vehicle and start running down the street down Edison. [¶] The witness followed the defendant. Officers arrived shortly thereafter and were directed to the defendant.

Specifically, Officer Arroyo made contact and detained and ultimately arrested the defendant. [¶] When they arrested the defendant, he was stumbling, had red, watery eyes, and smelled of alcohol. A blood sample was taken within two hours of this incident, which has been analyzed by the Sacramento County crime lab, and results showed blood-alcohol contents of .28 percent. [¶] . . . [¶] In terms of Ms. Catabran's injuries, she did have a broken finger, on I believe her left hand. The officer noticed when he came upon the collision and spoke with her that her finger was unnaturally at a right angle. He could tell it was broken. [¶] An officer indicated she had a cast for eight weeks and as of August 6th of this year, she was still wearing a splint and had limited range of motion at the time. She also had a swollen left knee, bruised shoulder, bruised thigh, and developed back pain . . . as a result of the crash."

In the course of taking defendant's plea, the trial court asked whether defendant had had enough time to talk to his attorney about the consequences of the plea. Defendant said: "Only on the time--he told me it would be a different amount of time. That would be the only difference." The court asked whether he understood that the total time would be five years eight months in state prison; defendant said: "Yes." The court asked whether defendant still needed to talk to his attorney about any aspect of the agreement; defendant said: "Yes." The court allowed defendant to talk to counsel off the record. When the parties went back on the record, the court asked defendant if he had now had enough time for counsel to answer any remaining questions; defendant said: "Yes."

The trial court added: "Because of the [GBI] allegation, you won't be getting--court credits will be reduced. [¶] In other words, instead of getting halftime off, you'll only be getting 15 percent from your sentence. [¶] Do you understand that?" Defendant said: "Yes."

When the trial court finally asked defendant to enter his plea, the court advised him that in light of his admission of the personal infliction of great bodily injury as to

count 2, the offense became "a serious or violent felony within the Penal Code." Defendant said he understood, then admitted the allegation.

The probation report recommended a total state prison term of six years eight months, including the three-year midterm on count 2, based on defendant's "exceptionally high blood alcohol content in the current offense and a prior (23578 V.C.)." The report stated that defendant's worktime credit would be 15 percent under section 2933.1, subdivision (c), which mandates that result for "violent felonies" within the meaning of section 667.5.

At sentencing, the trial court imposed the five-year eight-month sentence conditionally promised in the plea agreement. The court reiterated that defendant would receive 15 percent worktime credit because "this is a violent offense." The People's motion to dismiss the remaining counts was granted. The court revoked and terminated probation in the pending violation of probation case and ordered that any remaining unpaid restitution be transferred to the current case.

Defendant thereafter sought and obtained a certificate of probable cause for appeal, alleging ineffective assistance of counsel. Defendant asserted, among other things, that counsel failed to advise him that by accepting the proposed plea agreement he would be admitting a strike.

DISCUSSION

Defendant contends trial counsel was ineffective and defendant's plea was not voluntary because the record fails to show that counsel advised him his admission of the GBI allegation rendered his DUI offense a strike. (§§ 667.5, subd. (c)(8) [violent felonies], 1192.7, subd. (c)(8) [serious felonies]; *People v. Shirley* (1993) 18 Cal.App.4th 40, 45 [enhancement for infliction of GBI makes a felony "serious" under § 1192.7, subd. (c)(8)].)

As defendant acknowledges, the fact that his DUI offense became a strike due to the admitted GBI allegation was not a direct consequence of his plea, and therefore the trial court had no duty to advise him of that fact. (See *People v. Crosby* (1992) 3 Cal.App.4th 1352, 1355 [consequence of plea collateral if it increases punishment only on commission of future offense].) However, he asserts: (1) trial counsel did have such a duty and failed to perform it; and (2) counsel's lapse caused prejudice, because if correctly advised, defendant could have rejected the plea offer, gone to trial, and potentially avoided a true finding on the GBI allegation. Defendant is wrong on both points.

A defense lawyer's failure to advise a client about the collateral consequences of a guilty or no contest plea does not constitute constitutionally ineffective assistance of counsel under the test of *Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 694 [80 L.Ed.2d 674, 693, 697]). (*People v. Reed* (1998) 62 Cal.App.4th 593, 597-598, 601 (*Reed*).) By the same token, a defendant's lack of information about the collateral consequences of a plea does not render the plea involuntary. (*Id.* at pp. 597, 601.)

Defendant relies on a theoretical exception to *Reed*'s rule, noted by the court in dictum: "We do not mean to say that a defense counsel's affirmative misrepresentation in response to a specific inquiry from the defendant about parole eligibility may never constitute ineffective assistance." (*Reed, supra*, 62 Cal.App.4th at p. 601.) Defendant asserts that this exception applies under "the totality of the circumstances" because he "required a last minute conference about prison credits with his counsel which interrupted the plea proceedings, and because [he stated] at the plea hearing that counsel had already apparently misadvised him about the prison credits."

The record does not show that defendant specifically inquired about any topic relevant to his appellate argument, and his vague assertion that trial counsel "told me it would be a different *amount of time*" provides no support for the premise that counsel misrepresented anything to him. The *Reed* dictum does not assist defendant.

In any event, defendant was fully advised by the charging document, the trial court, and the probation report that the GBI allegation, if admitted, rendered his DUI offense a serious or violent felony. Defendant cites no authority holding that such advisements were legally insufficient merely because they did not use the word "strike."

Although defendant's ineffective assistance argument fails at the first step, we briefly address his claim of possible prejudice. He asserts that if he had refused to enter a plea and gone to trial, he "risked no more than virtually the same sentence, but faced a potential benefit of not incurring a strike conviction." First, if convicted he risked receiving the midterm or the upper term on the DUI offense, which would not constitute "virtually the same sentence." Second, it is not clear how defendant could have avoided "incurring a strike conviction": he had no apparent defense to the DUI charge, and if the victim's injuries met the standard for great bodily injury, the trier of fact could not have failed to find the GBI allegation true.

DISPOSITION

The judgment is affirmed.

HULL, J.

We concur:

BLEASE, Acting P. J.

HOCH, J.